SANYO SALES & SERVICE SDN. BHD.

v.

EDARAN SHAMELIN SDN. BHD.

HIGH COURT MALAYA, KUALA LUMPUR
ABU MANSOR ALI J
[CIVIL SUIT NO. D5-22-655-90]
4 SEPTEMBER 1991

CIVIL PROCEDURE: *Whether SAR erred in law by providing for the judgment - Whether claim should be directed to the other parties who were signatories to the agreement - Said agreement called 'factoring agreement' - For goods sold and delivered to the defendant - Whether triable issue.*

This is an appeal against the decision of the Court given in Chambers on 11 July 1991 dismissing the appellant/defendant's appeal against the judgment of the learned SAR given against the appellant as well as the order refusing stay.

The facts of this case was in an agreement called a factoring agreement. There were three parties to that agreement:

(a) Development and Commercial Finance Bhd.

(b) The defendant Edaran Shamelin Sdn. Bhd.

(c) Koperasi Shamelin Bhd.

Under this 'arrangement' the responden/plaintif *vide* writ dated 18 April 1990 claims against the defendant for the sum of RM156,000.48 for goods sold and delivered to the defendant on the orders of the defendant. *Inter alia* it was also not disputed that following this system of order and supply there were numerous occasions the goods were ordered by government servants from the responden/plaintiff.

Following the pattern or agreement there were infact twenty-two instances where payments were made by Development and Commercial Finance Bhd. to the responden/plaintiff. The decision of the learned SAR was that there was no triable issue in this suit and granted judgment against the defendant.

The matter before the Court was whether the judgment of the learned SAR was in error and whether the claim should be directed to the Development and Commercial Finance Bhd, or the Kakitangan Kerajaan who bought those goods.

To the contrary, in reply the plaintiff/respondent contented that the claim was for goods sold and delivered.

Held:

[1] The learned Judge found as a fact that the appellant through purchase orders amounting to RM156,000 placed orders from the plaintiff. This being the case, this Court finds that there is no merit in the argument of the appellant that the decision of the learned SAR was in error.

[2] This Court is in agreement with the learned SAR in saying there are no triable issues to go for trial and confirmed the decision of the learned SAR.

[Appeal dismissed.]

For the appellant/defendant - Amir Ismail, (M.S. Chee with him); M/s. Chin Choong Sang & Co. For the responden/plaintiff - M. Rajasekaran; M/s. Mah-Kok & Din

JUDGMENT

Abu Mansor Ali J:

This is an appeal against the decision of this Court given in Chambers on 11 July 1991 dismissing the appellant's/defendant's appeal against the judgment of the learned Senior Assistant Registrar against the appellant in encl. (21) as well as the order refusing stay in encl. (32).

The facts of this was in an agreement dated the 4 May 1989 - normally called a factoring agreement. There were 3 parties to that agreement:

(a) Development and Commercial Finance Bhd.

(b) The defendant, Edaran Shamelin Sdn. Bhd.

(c) Koperasi Shamelin Bhd.

Sungguhpun responden/plaintif tidak menjadi satu pihak kepada Perjanjian ini respondent ada disebut dibeberapa tempat umpamanya dalam klausa 8(f) bermaksud:

> Defendan membenarkan Development and Commercial Finance Bhd. (1st defendant) to release to dealer (the plaintiff) the due amounts (whatever is due to dealer (plaintiff) - due amounts ialah jumlah wang terkumpul oleh Development and Commercial Finance Bhd.

Dibawah peraturan mode atau cara jual-beli ini pihak perayu/defendant membuat satu "arrangement" dimana Kakitangan Kerajaan ditawarkan untuk memberi barang/kelengkapan daripada pembekal Sanyo Sales and Service, responden/plaintiff. Kakitangan Kerajaan telah memberi persetujuan gaji mereka akan dipotong tiap-tiap bulan untuk menyelesaikan hutang/ bayaran. Potongan gaji akan dibayar kepada Development and Commercial Finance Bhd.

Under this "arrangement" the responden/plaintiff vide writ encl. (1) dated the 18 April 1990 claims against the defendant for the sum of RM156,000.48 for goods sold and delivered to the defendant on the orders of the defendant.

It was also not disputed that following this system of order and supply (agreement dated 2 June 1989) there were numerous occasions the goods were ordered by government servants from the responden/plaintiff. Following the pattern or agreement there were in fact twenty-two instances where payments were made by Development and Commercial Finance Bhd. to the responden/plaintiff.

The decision of the learned Senior Assistant Registrar was what there was no triable issue in this suit and granted judgment against the defendant.

The judgment of the learned Senior Assistant Registrar was in error, according to the appellant/defendant, because properly according to appellant, the claim should be directed to the Development and Commercial Finance Bhd. or the Kakitangan Kerajaan who bought those goods. The responden/plaintiff was aware since the date of the agreement 2 June 1989 the person responsible to make the payment was the Development and Commercial Finance Bhd.

To this argument the responden/plaintiff replied that the claim of the responden/plaintiff was for goods sold and delivered. I found as a fact that the appellant, through purchase orders Exhs. "LPT1" to "LPT138" - purchase orders amounting to RM156,000 placed orders from Sanyo Sales & Service Sdn. Bhd., the plaintiff.

This being the case I find there is no merit in the argument of the appellant that the decision of the learned Senior Assistant Registrar was in error. It is clear from the exhibits that the defendant placed the orders for these goods amounting to RM156,000 in all under a system or mode of trading that had been in progress which the appellant conceded had been going on and what was not disputed was twenty-two occasions payments had been made by Development and Commercial Finance Bhd. for supplies made to the appellant/defendant.

I am in agreement with the learned Senior Assistant Registrar in saying there are no triable issues to go for trial and I confirm the decision of the learned Senior Assistant Registrar and I dismiss the appeal.

Following the dismissal of the appeal in encl. (21) I also dismiss the appeal for stay (32) with costs to the respondent as there is no reason to deprive the responden/plaintiff of the fruits of the judgment.

Also found at [1992] 2 CLJ 1080